

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2019

CORAM :

THE HON'BLE MR. JUSTICE N. SATHISH KUMAR

C.R.P. (PD) No.910 of 2006
and
M.P. No.8603 of 2006

P.R.N.Thirumurugan Revision Petitioner

Vs.

1.E.M.Esa Maricar (Deceased)
2.Hameed Sulthan Maricar
3.Jalaludeen Maricar
4.Fathima Nachiar
5.Shahul Hameed Nachiar
6.Ummanabasheera Nachiar
7.Bajiur Rahman Respondents

[RR4 to 7 brought on record as LR's of the deceased 1st respondent vide order of Court dated 05.12.2017 made in C.M.P.No.176 to 178 of 2014 in C.R.P.No.910 of 2006]

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the entire records pertaining to the order and decretal order passed in O.P.No.1 of 2004 dated 01.12.2005 on the file of the I Additional District Judge, Pondicherry at Karaikal and to set aside the same and to dismiss the O.P.No.1 of 2004 on the file of the Additional District Judge, Pondicherry at Karaikal.

For Petitioner : Mr.K.Natarajan
For Respondents
R1 : Died (Steps taken)
R2 to R7 : No appearance

O R D E R

Aggrieved by the order passed by the trial Court, allowing the application of the plaintiff to sue in forma pauperis, the present revision has been filed by the 1st defendant.

2.The suit has been filed by the plaintiff, praying to declare him as an indigent person to maintain the suit. The learned Additional District Judge allowed the application of the plaintiff, despite the counter filed by the revision petitioner opposing such application on the ground that the plaintiff is a Government servant, who is capable of paying the Court fee. But, the trial Court, without making any enquiry as contemplated under Order XXXIII Rule 5, 6 and 7 of the Code of Civil Procedure, has simply allowed the application, as against which, the present revision has been filed.

3.Heard learned counsel for the revision petitioner. None has appeared for the respondents.

4.Having regard to the above fact that the trial Court has simply allowed the application, without conducting any enquiry as contemplated under Order XXXIII Rule 5, 6 and 7 of the Code of Civil Procedure, I am of the view that a non-speaking order is not sustainable in law. When the application has been objected by the other side contending that the plaintiff has the means to pay the Court fee and is not an indigent person, enquiry ought to have been conducted by the trial Court to find out whether the plaintiff is actually not in a position to pay the Court fee. However, without any such enquiry, mechanically allowing the application, declaring him as an indigent person, in my view, is certainly erroneous. Hence, the order passed by the trial Court in O.P.No.1 of 2004 on 01.12.2005 is set aside. The trial Court shall hear the matter afresh, conduct enquiry and pass orders on merits within three months from the date of receipt of a copy of this order.

5.In fine, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mkn

To

The I Additional District Judge,
Pondicherry at Karaikal.

+1cc to Mr.K.Natarajan, Advocate sr.40960

C.R.P. (PD) No.910 of 2006
and M.P. No.8603 of 2006

ppa (co)
nr 02/07/2019



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